

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

SUMMIT 6 LLC,

Plaintiff,

v.

HTC CORPORATION, HTC AMERICA,  
INC., LG ELECTRONICS INC., LG  
ELECTRONICS USA, INC., LG  
ELECTRONICS MOBILECOMM USA,  
INC., MOTOROLA MOBILITY LLC, and  
TWITTER, INC.,

Defendants.

Case Action No. 7:14-cv-00014-O

JURY TRIAL DEMANDED

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SUMMIT 6 LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case Action No. 7:14-cv-00106-O

JURY TRIAL DEMANDED

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**DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF**

**TABLE OF AUTHORITIES**

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Defendants hereby address the declaration of Summit 6's expert, Dr. Mark T. Jones, and his deposition testimony, pursuant to the stipulation of the parties. Dkt. No. 165.

**I. "said identification" ('482 Patent, Claims 17 and 18):** Dr. Jones opines that "said identification" refers to the first "identification" in claim 13, because "[i]t would make no sense for claims 17 and 18 refer to [the] unclaimed action" of "identification of a user." APX-011: ¶ 31(c); *see also* APX-027: 42:7-22. But Claim 13 plainly recites two different "identifications," and both could supply the required antecedent because, Dr. Jones concedes, the pre-processing parameters could be downloaded and stored before *either* claimed identification. *See* APX-024-26, 38:23-39:5, 40:15-20; APX -55-62, Exs. 3-9.<sup>1</sup> Indeed, when the patentee wanted to reference the first "identification" (of digital content)—as it did in claim 13 step c—the patentee referenced it as "said *received* identification." Claims 17 and 18, however, do not. Under these circumstances, the term "said identification" is indefinite. *See* MPEP § 2173.05(e).

**II. "said client device" ('482 Patent, Claim 25):** Dr. Jones's opinion, which relies heavily on the prosecution history, forecloses Summit 6's attempt to correct claim 25 through claim construction. "A district court can correct a patent only if, among other things, 'the error is evident **from the face of the patent.**'" *H-W Tech., L.C. v. Overstock.com, Inc.*, 758 F.3d 1329, 1333 (Fed. Cir. 2014) (quoting *Grp. One, Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297, 1303 (Fed. Cir. 2005)) (emphasis added). But Dr. Jones never opines that the error is "evident from the face of the patent." Rather, he "examin[ed] the claims, specification, *and* prosecution history" together in arriving at his opinion. APX-012: ¶¶ 37-40; *see also* Plf. Resp. Br. at 26–27. Dr. Jones's opinion therefore underscores why this court *lacks* authority to correct the patent. *Grp. One, Ltd.*, 407 F.3d at 1303. Moreover, nothing prevents the patentee from claiming a different source for the pre-processing parameters in claim 25 than in other claims, *e.g.*, claim 13, and Dr. Jones admitted he did not consider this possibility. APX-030-32: 66:10-18; 72:12-

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<sup>1</sup> Moreover, Dr. Jones' opinion incorrectly assumes the law does not allow a method to contemplate a step occurring that he contends as not explicitly claimed (*i.e.*, identification of a user). Dr. Jones conceded he did not know whether or not patent law permits such a claim. APX-028-9: 48:18-49:5. *It can.* *Mars, Inc. v. H.J. Heinz Co., L.P.*, 377 F.3d 1369, 1376 (Fed. Cir. 2004) (the term "comprising" does not exclude un-recited elements or method steps).

73:5. Thus, it is not reasonably certain that “said client device” means “said local device.”<sup>2</sup>

**III. “media object identifier” (’557 Patent, all claims):** Dr. Jones’s opinions confirm that Summit 6’s non-construction of “media object identifier” is improper. He admits that “media object identifier” is not a term of art, and does not exist in any computer programming language or framework of which he is aware. APX-037-39: 83:20-84:15; 85:14-17; 85:18-24. And the evidence he cites provides only shifting, functional descriptions. *See, e.g.*, APX-040-41: 86:23-87:03 (providing a graphical user interface); 86:17-23 (pre-processing). Thus, his opinions confirm that Summit 6 seeks to cover *any* structure that performs the disclosed functions, to the extent those functions can even be identified.<sup>3</sup> *See, e.g.*, APX-043-47: 91:23-93:21 (ActiveX control); 97:20-24 (Java applet); 98:10-16 (Appendix A). Under longstanding Supreme Court precedent, such functional claiming is not allowed. Def. Resp. Br. at 25.

**IV. “code means” (’482 Patent, Claims 20, 39):** Dr. Jones’s citations provide no structure for the recited function. Dr. Jones points to “the drag-and-drop embodiment or the browse and click embodiments *as the capabilities* that allow the receipt of an identification.” APX-52: 113:1–7. These capabilities, however, describe only how a *user* interacts with the media object identifier—not how the software performs the function of receiving an identification. Defs. Op. Br. 29–30. Instead, Dr. Jones testified that “[t]he ActiveX framework would provide you with [an] event, and then it would be the programmer’s responsibility for . . . what they wanted to do in response to a drag-and-drop event.” APX-045: 93:14–21. But Summit 6 “cannot rely on the knowledge of one skilled in the art to fill in the gaps.” Defendants’ Resp. Br. 31 (quoting *Function Media, L.L.C. v. Google Inc.*, 708 F.3d 1310, 1319 (Fed. Cir. 2013)). Ultimately, Dr. Jones’s “structures” are black boxes that perform functions in undisclosed ways, rendering this means-plus-function claim element indefinite.<sup>4</sup>

<sup>2</sup> Dr. Jones admitted that he did not even consider whether the purported error was the inclusion of “*said* client device” in place of “*a* client device,” and further admitted that, if it was, this would change the claim’s scope. APX-033-34: 75:24-76:21; APX-035-36: 78:19-79:6. Thus, Dr. Jones cannot be reasonably certain that his alleged error is the correct one.

<sup>3</sup> Dr. Jones’s testimony also confirms that a person of skill could not derive a definitive list of required features or capabilities from the intrinsic record. APX-042-43, 48-50: 90:03-91:14; 102:19-104:20, esp. 104:12-20.

<sup>4</sup> *See* APX-049-54: 112:3-113:07 (media object identifier); 119:20-120:7 (Figs. 1 and 2); 121:17-122:9 (Fig. 4).

Dated: February 3, 2015

Respectfully submitted,

By: s/ John R. Emerson

Mark D. Selwyn (*pro hac vice*)  
Jason Kipnis (*pro hac vice*)  
Katherine D. Prescott (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
950 Page Mill Road  
Palo Alto, CA 94304  
Telephone: (650) 858-6000  
Facsimile: (650) 858-6100  
mark.selwyn@wilmerhale.com  
jason.kipnis@wilmerhale.com  
katherine.prescott@wilmerhale.com

Kevin S. Prussia (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000  
kevin.prussia@wilmerhale.com

Russell Emerson  
HAYNES & BOONE  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: (214) 651-5328  
Facsimile: (214) 200-0884  
russ.emerson@haynesboone.com

***Attorneys for Defendant APPLE INC.***

s/ Hsiwen Lo  
Deborah L. Sterling  
Texas Bar No. 19170950  
QUILLING SELANDER LOWNDS  
WINSLETT & MOSER, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
Telephone: 214-871-2111  
Facsimile: 214-871-2111

s/ D. Clay Holloway  
Steven D. Moore (*pro hac vice*)  
smoore@kilpatricktownsend.com  
KILPATRICK TOWNSEND LLP  
Eighth Floor  
Two Embarcadero Center  
San Francisco, CA 94111  
(415) 576.0200 (telephone)  
(415) 576.0300 (facsimile)

*dsterling@qslwm.com*

Steven J. Routh (*pro hac vice*)  
ORRICK HERRINGTON & SUTCLIFFE LLP  
Columbia Center  
1152 15th Street, N.W.  
Washington, D.C. 20005-1706  
Tel.: (202) 339-8400  
Fax: (202) 339-8500

Robert M. Isackson (*pro hac vice*)  
ORRICK HERRINGTON & SUTCLIFFE LLP  
666 Fifth Avenue  
New York, NY 10103-0001  
Tel.: (212) 506-5000  
Fax: (212) 506-5151

Stacey E. Stillman (*pro hac vice*)  
ORRICK HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Tel: (650) 614-7400  
Fax: (650) 614-7401

Hsiwen Lo (*pro hac vice*)  
ORRICK HERRINGTON & SUTCLIFFE LLP  
2050 Main Street  
Suite 1100  
Irvine, CA 92614-8255  
Tel: (949) 567-6700  
Fax: (949) 567-6710

***Attorneys for Defendants LG  
ELECTRONICS, INC., LGE  
ELECTRONICS U.S.A., INC., AND LG  
ELECTRONICS MOBILECOMM U.S.A.,  
INC.***

*s/ David J. Silbert*

David J. Silbert (*pro hac vice*)  
Leo L. Lam (*pro hac vice*)  
Julie A. Duncan (*pro hac vice*)  
KEKER & VAN NEST LLP  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: 415 391 5400

D. Clay Holloway (*pro hac vice*)  
dholloway@kilpatricktownsend.com  
Bonnie M. Grant (Tex. Bar No. 24067634)  
bgrant@kilpatricktownsend.com  
Akarsh P. Belagodu (*pro hac vice*)  
abelagodu@kilpatricktownsend.com  
Shayne E. O'Reilly (*pro hac vice*)  
soreilly@kilpatricktownsend.com  
KILPATRICK TOWNSEND LLP  
Suite 2800  
1100 Peachtree Street  
Atlanta, Georgia 30309-4530  
(404) 815-6500 (Telephone)  
(404) 815-6555 (Facsimile)

GRUBER HURST JOHANSEN HAIL  
SHANK  
MICHAEL K. HURST (Bar No. 10316310)  
mhurst@ghjhlaw.com  
JOSHUA M. SANDLER (Bar No. 24053680)  
jsandler@ghjhlaw.com  
1445 Ross Avenue  
Suite 2500  
Dallas, Texas 75202  
Telephone: 214 855 6800  
Facsimile: 214 855 6808

***Attorneys for Defendant MOTOROLA  
MOBILITY LLC***

*s/ Philip Ou*

Yar R. Chaikovsky  
Bryan K. James (*pro hac vice*)  
Philip Ou (*pro hac vice*)  
MCDERMOTT WILL & EMERY LLP  
275 Middlefield Road, Suite 100  
Menlo Park, California 94025-4004  
Telephone: +1 650 815 7400

Facsimile: 415 397 7188  
dsilbert@kvn.com  
llam@kvn.com  
jduncan@kvn.com

Brett C. Govett  
FULBRIGHT & JAWORSKI  
2200 Ross Ave., Suite 2800  
Dallas, TX 75201-2784  
Telephone: 214.855.8118  
Facsimile: 214.855.8200  
brett.govett@nortonrosefulbright.com

***Attorneys for Defendant TWITTER, INC.***

Facsimile: +1 650 815 7401  
Email: ychaikovsky@mwe.com  
Email: bjames@mwe.com  
Email: pou@mwe.com

E. Leon Carter (Texas Bar No. 03914300)  
Linda R. Stahl (Texas Bar No. 00798525)  
CARTER SCHOLER ARNETT HAMADA &  
MOCKLER, PLLC  
Campbell Centre II  
8150 N. Central Expressway, 5th Floor  
Dallas, Texas 75206  
Telephone: +1 214 550 8160  
Facsimile: +1 214 550 8185  
Email: lcarter@carterscholer.com

***Attorneys for Defendants  
HTC CORPORATION and HTC  
AMERICA, INC.***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 3rd day of February 2015, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system pursuant to Local Rule 5.1(d).

s/ Philip Ou